



German General Rules of Marine Insurance

Special Conditions for Cargo

(ADS Cargo 1973 – Edition 1984)

1 Extent of Cover

1.1 Insured and non-insured risks

- 1.1.1 The insurance covers all risks to which the goods are exposed during the currency of the insurance.
- 1.1.2 The insurance does not cover the risks of
 - 1.1.2.1 war, civil war or warlike events, as well as events arising – independent of a state of war – from the hostile use of engines of war and the presence of engines of war as a consequence of one of these risks;
 - 1.1.2.2 strikes, lockouts, labour disturbances, acts of violence by terrorists or persons acting from a political motive irrespective of the number of participants, riots and other civil commotions;
 - 1.1.2.3 nuclear energy;
 - 1.1.2.4 seizure, deprivation or other acts of authorities;
 - 1.1.2.5 insolvency or financial default of the owners, charterers or operators of the vessel or other financial disputes with the parties mentioned above.
- 1.1.3 For the inclusion of the risks excluded as per Sect. 1.1.2.1 to 1.1.2.4 the respective DTV Clauses shall apply. If these are not attached to the policy, the versions last published in the Bundesanzeiger (Federal Gazette) prior to attachment of the insurance shall apply.

1.2 Forms of cover

Full Cover (unless otherwise agreed)

The insurance cover, irrespective of percentage, loss of or damage to the goods insured as a consequence of a risk insured against.

Stranding Cover (where agreed)

The insurance covers, irrespective of percentage, loss of or damage to the goods as a consequence of

- a) stranding; there is a case of stranding where the vessel carrying the goods strikes ground or runs aground, capsizes, sinks, founders, collides with other vessels or objects or is damaged by ice;
- b) accident to another means of conveyance carrying the goods;
- c) collapse of storage buildings;
- d) fire, lightning, explosion; earthquake, seaquake, volcanic eruptions and other natural catastrophes; impact or crashing of a flying object, parts thereof or its cargo;
- e) jettison, washing overboard or being lost overboard as a result of heavy weather;
- f) sacrifice of goods;
- g) discharge, intermediate storage and loading of the goods at a port of refuge called at on account of a risk insured against.

The insurance also covers, irrespective of percentage,

the total loss of whole packages, excluding loss arising from damage or disappearance (e. g. theft, embezzlement, non-delivery)

and

total loss of whole packages as a result of damage caused by accidents during loading and unloading of the means of conveyance.

1.3 Special cases

1.3.1 Deck cargo

For goods loaded on deck with the consent of the Assured, Stranding Cover only shall apply.

Goods carried in closed containers or in barges carried by oversea vessels are insured on deck on the same conditions as in the hold.

1.3.2 Goods transhipped and returned

For goods which, subsequent to a previous voyage, are on-carried or returned on the insured voyage, Stranding Cover only shall apply, unless Underwriters were informed or should have been aware thereof at the time the contract was concluded or the loss or damage sustained could have occurred only on the insured voyage.

1.3.3 Damaged Goods

If the goods are already damaged at the time the insured voyage commences, the insurance covers loss or damage only if the damage existing at the time the voyage commences has no influence on the loss or damage occurring during the voyage.

1.4 Exclusions

1.4.1 The insurance does not cover loss or damage caused by

- 1.4.1.1 delay;
 - 1.4.1.2 inherent vice or nature of the goods;
 - 1.4.1.3 ullages or differences in quantity, measure or weight customary in the trade, which are, however, deemed to have been taken into account if a deductible has been agreed;
 - 1.4.1.4 normal atmospheric humidity and ordinary temperature fluctuations;
 - 1.4.1.5 lack or insufficiency of packing customary in trade.
- ###### 1.4.2 The insurance also excludes indirect loss or damage.

1.5 Insured expenses and charges

1.5.1 The insurance covers

- 1.5.1.1 general average contributions payable by the Assured by virtue of an average statement drawn up according to law or York Antwerp Rules, provided the general average act was performed in order to prevent loss or damage for which Underwriters would be liable. Where the contributory value exceeds the insurable value, Underwriters shall be liable in full up to the amount of the sum insured. The provisions governing under-insurance shall remain unaffected;

- 1.5.1.2 the costs of transshipment, of temporarily warehousing the goods and the extra costs of forwarding them on account of an insured accident after the risk has attached, if reasonably incurred or incurred at Underwriters' request;
- 1.5.1.3 expenses incurred in order to avert or minimise loss or damage arising from a risk insured against and charges by third persons for ascertaining the extent of loss or damage, if reasonably incurred or incurred at Underwriters' request.
- 1.5.2 The Assured may call upon Underwriters to guarantee payment of general average contributions and to advance sufficient funds in order to meet the expenses incurred in averting or minimising an impending loss covered by the insurance.

2 Alteration of risk

- 2.1 The Assured is entitled to alter and, in particular, to increase the risk or to allow such alteration by a third person.
- 2.2 If the Assured alters the risk or receives knowledge of any alteration of risk, he is under obligation to notify Underwriters thereof immediately.
- 2.3 There is an alteration of risk, in particular, where
 - there has been a considerable delay in commencing or completing the voyage
 - the designated or usual course of the voyage has been considerably departed from
 - the port of destination has been changed
 - the goods have been lightered where this is locally not customary
 - the goods have been loaded on deck.
- 2.4 Where the Assured has not notified Underwriters of an increase in risk, Underwriters shall be discharged from liability, unless the infringement of the obligation to notify was due to neither wilful intent nor gross negligence, or the increase of risk could in no way have had any influence on the occurrence of loss or damage or the extent thereof.
- 2.5 In the event of an increase of risk, Underwriters shall be entitled to an additional premium to be agreed, unless such increase in risk is made in furtherance of the interests of Underwriters, for reasons of humanity or is caused by a risk insured against to which the goods are exposed.

3 Means of conveyance

- 3.1 For carriage by oversea vessels, the DTV Classification Clause shall apply.
- 3.2.1 Transportation by other means of conveyance is insured only if such means of conveyance fulfils the necessary requirements of suitability for the loading and carriage of the goods. Inland waterway vessels are deemed to be suitable if appropriately classified by a recognised classification society.
- 3.2.2 Where these prerequisites are not present, carriage is insured notwithstanding, provided the Assured has selected the means of conveyance or the forwarding agent or the carrier with the necessary prudence and foresight. If the Assured receives knowledge of unsuitability of the means of conveyance, he is under obligation to notify Underwriters thereof immediately and pay an additional premium to be agreed.

4 Alteration of means of conveyance

- 4.1 Underwriters are discharged from liability if the goods are carried by a means of conveyance other than that agreed in the contract of insurance, or are transhipped although the contract of insurance stipulates direct transport. The same applies if a specific means of conveyance or a specific route has been agreed.

- 4.2 The liability of Underwriters remains if, after the risk has attached and as a consequence of a risk insured against, the means of conveyance is altered or the voyage is abandoned without the consent of the Assured. The provisions governing alteration of risk shall apply accordingly.

5 Duration of insurance

(warehouse to warehouse)

- 5.1 The insurance attaches when the goods are removed from the place of their last storage at the place of shipment for conveyance on the insured voyage.
- 5.2 The insurance terminates, according to whichever case shall first occur,
 - 5.2.1 when the goods are delivered at destination to the place designated by the consignee (place of final delivery), or
 - 5.2.2 when the goods, following discharge at the port of destination, are forwarded to a destination not agreed in the contract of insurance and as a result of the change of destination the risk is increased, or
 - 5.2.3 when intermediate storage arranged by the Assured exceeds a total of 30 days; if this time-limit is exceeded before loading on the oversea vessel the insurance reattaches in case of on-carriage within 90 days, or
 - 5.2.4 upon expiry of 60 days after discharge from the oversea vessel at the port of destination;
 - 5.2.5 upon transfer of title when the goods are sold on account of a loss arising from a risk insured against.

6 Insurable value

The insurable value of the goods is their ordinary trade value or, if there is no such special value, the common value current at the place of shipment at the time the risk attached, plus the charges for insurance, the expenses incurred up to the time the goods are delivered to the carrier and the freight paid independent of delivery.

7 Measure of indemnity

7.1 Total loss

In the case of total loss of the goods, or if the Assured is deprived of the goods without hope of recovery or if it is ascertained by experts that the goods have been reduced to such a state as to cease to be a thing of the kind insured, the measure of indemnity shall be that portion of the sum insured accruing to the goods, less the value of salvage.

7.2 Missing goods

Where the goods are missing together with the means of conveyance, the measure of indemnity shall be as in the case of total loss, unless a loss must in all probability be presumed as a consequence of a risk not insured against. The means of conveyance is deemed to be missing if from the time of its scheduled arrival 60 days — on European inland waterways 30 days — have elapsed, and up to the time of claim being made no news of it has been received. Where the forwarding of news may have been delayed on account of war, warlike events, civil war or civil commotions, the time from which the goods are presumed lost shall be extended according to circumstances, but to not more than 6 months.

7.3 Damaged goods

- 7.3.1 In the event of the goods or part of the goods being damaged, the ordinary trade value or, if no such value exists, the common price must be ascertained, for which the goods would have sold at the place of destination had they arrived there sound (sound value), and also the value upon arrival in

- damaged condition. The measure of indemnity is such proportion of the insurable value as the difference between the sound and damaged value bears to the sound value of the goods.
- 7.3.2 The damaged value can also be ascertained by open sale or public auction if this is requested by Underwriters immediately upon receiving knowledge of the material facts of the extent of damage; in such case, the gross proceeds of the sale replace the damage value for the purpose of adjustment. If, according to the conditions of sale, the seller has to advance money, Underwriters guarantee the payment of the sales proceeds provided they agreed to the conditions of sale.
- 7.4 **Reconditioning**
- In the event of loss of or damage to parts of the goods, the Assured may request — in lieu of a proportion of the insurable value — indemnification of the cost necessary at the time the loss or damage is ascertained for replacing or reconditioning the lost or damaged parts, such cost, however, being limited to the sum insured and to the proportion which the sum insured bears to the sound value.
- 7.5 **Machinery and apparatus**
- Where machinery, machinery parts and apparatus are insured, the DTV Machinery Clause shall apply.
- 7.6 **Under-insurance**
- If the sum insured is less than the insurable value, Underwriters are liable for loss or damage or expenses incurred for such proportion only of the measure of indemnity as such sum insured bears to the insurable value.
- 7.7 **Franchise**
- Where a franchise is agreed without a modus of calculation being determined, such franchise shall, at the option of the Assured, be calculated on the value of each package (each piece in case of unpacked goods), each lot, each series or each bill of lading or on the value of the whole shipment or the contents of each ship's hold or lighter.
- 7.8 **Sale of goods prior to termination of voyage**
- 7.8.1 Where, after the risk has attached and without Underwriters being discharged from liability, the vessel has abandoned her voyage or of any other reason the voyage has not been completed, Underwriters are entitled to request the Assured to sell the goods with their assistance, either by open sale or public auction, if the goods cannot be forwarded within a reasonable time or without incurring unreasonable expense. If the goods must be sold at the request of Underwriters, the sale must take place forthwith.
- 7.8.2 Where the goods have been sold, the Assured is entitled to claim the difference between the insured value and the proceeds of the sale. This also applies where the goods have to be sold during the course of the voyage on account of an accident arising from perils insured against.
- 7.8.3 If, according to the conditions of sale, the seller has to advance money, Underwriters guarantee the payment of the sales proceeds provided they agreed to the conditions of sale.
- 7.9 **Non-acquired interest; costs saved**
- Where an insured interest in anticipated profits, additional value, customs duty, freight or other expenses has not been acquired at the time loss or damage occurs, that proportion of the sum insured accruing thereto shall not be taken into account when the claim is assessed. The same shall apply to costs saved in consequence of loss or damage occurring.
- 7.10 **Indemnity from third parties**
- 7.10.1 Any sums received by the Assured from third parties on account of the loss or damage sustained shall be deducted from the measure of indemnity.
- 7.10.2 Where compensation cannot be claimed from third parties entrusted with the carriage of the goods on account of their having exonerated themselves beyond the legal or customary limits, Underwriters shall to such extent be discharged from liability. This shall not apply where the Assured has no influence on such exoneration.
- 7.11 **Subrogation to rights and remedies**
- 7.11.1 In the event of the Assured requesting payment of the sum insured, all rights and remedies in and in respect of the insured goods shall pass to Underwriters, upon such payment being made, at their option only. Subrogation shall not ensue if Underwriters do not exercise such option immediately upon receiving knowledge of the circumstances of loss or damage.
- 7.11.2 The subrogation of Underwriters to the rights and remedies of the Assured shall not relieve the latter from his duty to take all possible measures to minimise the loss or damage, insofar as Underwriters are not able to do so themselves. The Assured must furnish Underwriters with all information necessary for the prosecution of the claim, deliver or issue all documents by which such claim can be established and render every assistance required for recovery of the goods and turning to account whatever remains of them. The costs are to be borne by Underwriters; they must, if requested to do so, advance the sums necessary to meet the expenses. That part of the net proceeds of sale exceeding the sum insured shall be refunded to the Assured.
- 7.11.3 In the event of subrogation not ensuing, the Assured shall refund to Underwriters the common price or the net sale proceeds of goods recovered.
- 7.11.4 The subrogation of claims against third parties and the right of Underwriters to abandon remain unaffected.
- 7.12 **Delay**
- Underwriters — apart from their liability for interest as provided by law — are liable to the Assured for a loss arising from delay in payment only in the event of their having delayed the payment wilfully or by gross negligence.
- 8 **Procedure in the event of loss or damage**
- 8.1.1 In the event of loss or damage occurring, the Assured must follow the instructions of Underwriters, immediately request attendance of the claims agent nominated in the insurance policy or certificate to survey and certify the loss or damage and forward the claim survey report to Underwriters.
- 8.1.2 Where substantial reasons can be proved, the Assured may call in the nearest Lloyd's Agent, instead of the nominated claims agent, to survey and certify the loss or damage.
- 8.2 In the event of dispute, either party shall be entitled to request that the cause and extent of loss or damage be ascertained by experts.
- 8.2.1 In such case, two experts must be immediately appointed, one by each party. Each party shall be entitled to request the other party in writing to appoint the second expert, at the same time advising the other party of the expert nominated by them. In the event of such party failing to nominate its expert within four weeks following receipt of such request, the requesting party shall be entitled to have said expert appointed by the Chamber of Commerce — or by the consular representation of the Federal Republic of Germany — in whose area of jurisdiction the goods are located.

- 8.2.2 Before entering upon the reference, the two experts shall nominate an umpire. Should the experts fail to agree on an umpire, the umpire shall, upon application by one or both parties, be appointed by the Chamber of Commerce – or the consular representation of the Federal Republic of Germany – in whose area of jurisdiction the goods are located.
- 8.2.3 The findings of the experts must contain all facts necessary for assessing the cause of the loss or damage and the measure of indemnity of Underwriters.
- 8.2.4 The experts shall submit their findings to both parties simultaneously. In the event of the experts arriving at divergent findings, Underwriters shall immediately submit said findings to the umpire. The umpire shall then decide on the points at issue within the limits of both experts' findings and shall submit his award to both parties simultaneously.
- 8.2.5 Each party shall bear the costs of its own expert, the costs of the umpire to be borne by the two parties in equal proportion. This also applies if such procedure has been agreed upon between the parties. In case such procedure has been requested by the Underwriters they bear the costs in total.
- 8.2.6 The findings of the experts or the decision of the umpire shall be binding, unless evidence is brought to show that they are obviously inconsistent with the actual material facts.
- 8.2.7 If the experts or umpire are unwilling or unable to ascertain the loss or damage, or if they are guilty of undue delay, other experts shall be appointed.
- 8.3 Underwriters may refuse payment until the loss or damage has been ascertained in accordance with the foregoing provisions. If, due to no fault or negligence of the Assured, the loss or damage has not been ascertained in the manner aforesaid, Underwriters may refuse payment until the loss or damage has been ascertained in some other appropriate manner.

9 Concluding provisions

9.1 Currency

- 9.1.1 Payments to be made and received shall be effected in the currency of the sum insured.
- 9.1.2 If, in the event of general average, the contributory value is stated in a currency other than that of the sum insured, such contributory value shall be converted into the currency of the sum insured at the rate of exchange prevailing on the day on which vessel and cargo parted company.

9.2 Insurance for account of another

Where the insurance is concluded for account of another or for account of whom it may concern, the knowledge and conduct of the Assured shall be considered to be equivalent to the knowledge and conduct of the person concluding the insurance.

9.3 Bailees

The insurance shall not inure to the benefit of the carrier, bailee, warehouseman or forwarding agent.

9.4 Coinsurance

- 9.4.1 For insurances written by more than one Underwriter, the liability of the individual Underwriter is always a separate and not a joint one, even if the policy or certificate was signed by one Underwriter for and on behalf of all Underwriters.
- 9.4.2 Agreements between the leading Underwriter and the Assured are binding on the coinsurers. This applies in particular, in favour of the Assured, to the settlement of claims; the leading Underwriter is, however, not entitled without the consent of the coinsurers – each of whom is to take his decision separately – to
- increase the policy maximum
 - include the risks not covered as per Sect. 1.1.2
 - alter the currency of the policy
 - alter the provisions for notice of cancellation.
- In the absence of the consent of the coinsurers, the leading Underwriter is also liable, by virtue of an unrestricted statement of declaration, for the shares of the coinsurers.
- 9.4.3 In the event of an Underwriter relinquishing the lead, he must immediately notify the coinsurers of this in writing; such notification may also be furnished by the Assured. In such case, each coinsurer is at liberty to cancel the insurance contract by giving four weeks' notice. The right to give notice of cancellation expires at the end of one month after receipt of the written notification that the leading Underwriter has been replaced.
- 9.4.4 Statements received by the leading Underwriter shall be deemed to have also been received by the coinsurers.

9.5 Notice of cancellation

Notice of cancellation given by Underwriters to the broker shall be deemed to have been notified to the Assured.

9.6 Relationship to the German General Rules of Marine Insurance (ADS)

- 9.6.1 These provisions replace the Special Rules for Insurance on Goods of the ADS (Sect. 80–99). Unless otherwise provided, they also apply to other insurances covering any interest in or with respect to the goods, for instance to an insurance on anticipated profits or commission or to a special insurance on freight paid independent of delivery.
- 9.6.2 The remaining provisions of the ADS apply supplemental thereto, insofar as they are not amended by virtue of these Special Conditions for Cargo.